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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In The Court Of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Deborah Brooks Durden, Administrative Law Judge

Docket No. 23-ALJ-04-0038-AP

Appellate Case No. 2023-000578

South Carolina Department of Corrections, Respondent,

v.

Kenneth Rivera # 318979, Appellant.

DESIGNATION OF MATTER

TO BE INCLUDED IN THE RECORD ON APPEAL

Appellant proposes the following be included in the Record on Appeal:

1. Notice of Appeal filed February 23, 2023
2. Judge Durden Order of Dismissal filed March 20, 2023
3. Appellant's Notice of Appeal filed with the SC Court of Appeals
4. SCDC April 19, 2023 Entry of Appearance
5. Appellant's April 26, 2023 Initial Brief
6. Kiosk's Exhibit #1 22-02872642
7. Exhibits # 2 & 3
8. Proof of Service to all parties involved.

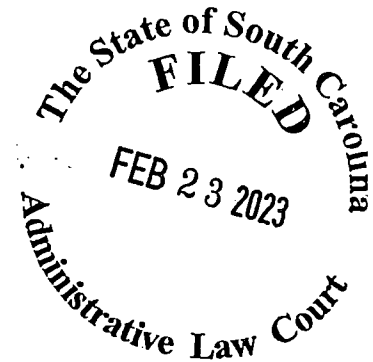
I certify that this designation contains no matter which is irrelevant to this appeal.

JAM JADELL

1  
KR

Below is information regarding your case which has been filed with the ALC. Please refer to the Rules of Procedure (enclosed) for the time frames on filing briefs and other matters.

Case Type	Case Number	Filing Date	Date Assigned	Case Title (Appellant v Respondent)	JUDGE NAME	Grievance No.
DOC 04 Appeal	23C0038	1/30/2023	2/23/2023	Kenneth Rivera #318979 v. South Carolina Department of Corrections	Judge Durden	BRCI 0803-22



You must file all original documents and correspondence regarding this case directly with the above-named Judge and serve a copy on the Dept. of General Counsel, S.C. Dept. of Corrections, PO Box 21787, Columbia, SC 29221.

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Kenneth Rivera, #318979,

Appellant,

v.

South Carolina Department of Corrections,

Respondent.

Docket No. 23-ALJ-04-0038-AP

Grievance No. BRCI 0803-22


**ORDER OF DISMISSAL**

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to a Notice of Appeal filed by Kenneth Rivera (Appellant), an inmate incarcerated with the South Carolina Department of Corrections (Department or SCDC). Appellant seeks review of the Department's Step 2 Grievance decision in a matter concerning the dirty trays. The SCDC decision indicates that Appellant was not sanctioned any accrued good time. Additionally, Appellant has not alleged the infringement of any other state-created liberty or property interest.

This Court reviews Department grievance decisions pursuant to the South Carolina Supreme Court decision in Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). Under the Al-Shabazz line of cases, this Court may only review matters related to a state-created liberty or property interest. See id., 338 S.C. at 368-69, 527 S.E.2d at 749-50 (vesting the ALC with jurisdiction over the loss of state-created liberty interests such as accrued good time credit); Wicker v. S.C. Dept. of Corrs., 360 S.C. 421, 602 S.E.2d 56 (2004) (holding that inmate had a right to procedural due process in matters involving a state-created right to property such as wages). Specifically, the South Carolina Supreme Court has stated that summary dismissal of an otherwise properly perfected inmate appeal "may be appropriate where the inmate's grievance does not implicate a **state-created** liberty or property interest." Slezak v. S.C. Dept. of Corrs., 361 S.C. 327, 331, 605 S.E.2d 506, 508 (2004) (citation omitted) (emphasis added).

**THEREFORE, IT IS HEREBY ORDERED** that this appeal is **DISMISSED, WITH PREJUDICE.**

**AND IT IS SO ORDERED.**



Deborah Brooks Durden, Judge  
S.C. Administrative Law Court

March 20, 2023  
Columbia, South Carolina

**CERTIFICATE OF SERVICE**

I, Robin E. Coleman, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).

*Robin Coleman*

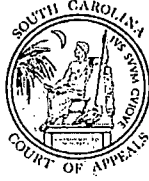
Robin E. Coleman  
Judicial Aide to Judge Deborah Brooks Durden

March 20, 2023  
Columbia, South Carolina

FILED

03/20/2023

SC Admin. Law Court



## The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1220 SENATE STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1890  
FAX: (803) 734-1839  
[www.sccourts.org](http://www.sccourts.org)

April 13, 2023

Kenneth Rivera, 00318979  
Broad River Correctional Institution  
4460 Broad River Road  
Columbia SC 29210

Re: Kenneth Rivera, #318979 v. SCDC  
Appellate Case No. 2023-000578

Dear Mr. Rivera:

This Court has received your notice of appeal, and the case has been assigned the appellate case number that appears above. Please use this number on all future correspondence relating to this matter.

All parties to this matter are advised that all filings must comply with the requirements of Rule 267 of the South Carolina Appellate Court Rules (SCACR). The SCACR are available online at [www.sccourts.org/courtreg](http://www.sccourts.org/courtreg). Additionally, any filings submitted by counsel admitted in South Carolina must include counsel's bar number.

The attention of the parties is directed to the order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. The order can be found at [www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2014-04-15-02](http://www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2014-04-15-02). Please note that the responsibility for insuring that information is redacted or sealed as

required by this order rests with counsel and the parties. This office will *not* review filings for redaction or to determine if materials should be sealed.

This is to advise that the title in the above matter has been changed to read as follows:

**Kenneth Rivera, #318979, Appellant,**

**v.**

**South Carolina Department of Corrections, Respondent.**

All future records in this matter should be changed to reflect this title. If you have any questions, please do not hesitate to contact this office.

Very truly yours,

A handwritten signature in cursive script that reads "Catherine Hannissal, deputy". The signature is written in black ink and is positioned above the printed name.

CLERK

cc: Christina Catoe Bigelow, Esquire



## The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
CHIEF DEPUTY CLERK

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April 13, 2023

Kenneth Rivera, 00318979  
Broad River Correctional Institution  
4460 Broad River Road  
Columbia SC 29210

Re: Kenneth Rivera, #318979 v. SCDC  
Appellate Case No. 2023-000578

Dear Mr. Rivera:

Upon reviewing your motion to proceed in forma pauperis, the following deficiency has been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter or this matter will be dismissed:

- A proof of service has not been provided. You must serve and file a proof of service substantially in the format shown by Form 7 in Appendix C to part II of the SCACR.

Very truly yours,

A handwritten signature in black ink that reads "V. Claire Allen". The signature is written in a cursive style.

CLERK

cc: Christina Catoe Bigelow, Esquire



**SOUTH CAROLINA**  
DEPARTMENT OF CORRECTIONS  
*Safety, Service, and Stewardship*

HENRY McMASTER, Governor  
BRYAN P. STIRLING, Director

April 19, 2023

*Via Email to [ctappfilings@sccourts.org](mailto:ctappfilings@sccourts.org)*  
The Honorable Jenny A. Kitchings  
Clerk of Court, S.C. Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

**RE: Kenneth Rivera, #318979, v. South Carolina Department of Corrections**  
**Appellate Case No. 2023-000578**

Dear Ms. Kitchings:

Please accept this letter as undersigned counsel's **Entry of Appearance** in the above-referenced case. I am mailing Appellant a copy of this letter today.

Thank you for your attention to this matter, and please do not hesitate to contact me should you have any questions or concerns.

Sincerely,

Joseph R. Shakibanasab, SC Bar #102825  
Staff Attorney  
South Carolina Department of Corrections

cc: Kenneth Rivera, #318979  
Dorm-Room-Bunk: SA-0240-A  
Broad River Secure Facility  
4460 Broad River Road  
Columbia, SC 29210

Exhibit #3

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
INMATE GRIEVANCE FORM  
STEP 2

Office Use Only

INMATE NAME: Kenneth Rivera  
SCDC NUMBER: 318979  
INSTITUTION: BRSF  
HOUSING UNIT: SA # 240  
WORK ASSIGNMENT: N/A

Grievance No: BRCI-023  
Code: General FCI-15  
Policy \_\_\_\_\_  
Disc. Hear. \_\_\_\_\_  
Class \_\_\_\_\_  
PREA \_\_\_\_\_  
Date Received: 12/12/22  
IGC Initials: LS  
Date Received: 12/19/22  
IGA Initials: BW

INMATE'S REASON FOR APPEAL (state specific dissatisfaction):

I Kenneth Rivera # 318979 do appeal the Warden's decision. In Warden's Nelson response he stated "Food is inspected", if so he would know that the food is always cold, the hard trays have left over food in them because they aren't being washed properly

Grievant Signature Kenneth Rivera Date 12/16/2022

RESPONSIBLE OFFICIAL'S DECISION AND REASON:

I have reviewed your concern. In your grievance you stated that the Congaree unit at Broad River Correctional Institution (BRCI) has recently been receiving hard food trays. You state since the start of this process you have observed the trays in an un-clean manner with leftover food on them from the previous day. You have requested that cafeteria return to serving on Styrofoam plates/trays. Be advised that all trays are washed in 180-degree water before they are re-used. Furthermore, the Warden maintains the discretion of determining where intitutional funds are allocated. Pursuant to SCDC Policy ADM-16.05 Food Service Operations, "Daily inspections will be performed by the Food Service Specialist on duty and will be documented on SCDC Form 20-52, "Daily Institutional Inspection Checklist for Cafeterias." Refrigeration, dry storage, and dishwasher water temperatures will be checked daily, and the temperatures will be recorded on SCDC Form 20-52." You have failed to substantiate your claim that the food trays are not being properly cleaned prior to distribution.

Therefore, your grievance is denied.

You may appeal this decision under the Administrative Procedures Act to the Administrative Law Court. In order to appeal, you must fill out the attached Notice of Appeal Form and submit it as instructed on the form within 30 days of receipt.

Responsible Official Signature Patricia Alan Date 1/10/23

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Exhibit #2

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Ref # 22-02872642

INMATE GRIEVANCE FORM

RECEIVED

STEP 1

NOV 08 2022

INMATE NAME: <u>Kenneth Rivera</u>	OFFICE USE ONLY
SCDC NUMBER: <u>318979</u>	Grievance No. <u>BRCI-0803-22</u>
INSTITUTION: <u>BRSE -</u>	Code: General <u>FD</u> <u>D</u>
HOUSING UNIT: <u>CB #214</u>	Policy: _____
WORK ASSIGNMENT: <u>N/A</u>	Disc. Hear. _____
	Class. _____
	PREA _____
	Date Received <u>11/14/22</u>
	IGC Initials <u>[Signature]</u>

STATEMENT OF GRIEVANCE (Indicate the date of incident, and if the grievance is a challenge to SCDC Policy, specify which policy. Include supporting documentation and attach answered RTSM or Kiosk reference number.)

I, Kenneth Rivera #318979 is the grievant of this grievance. On 11/06/2022 at 4:31am I did state the facts. Since Congaree unit been receiving hard food trays I have been noticing the food trays are not clean (left over food from prior meals still in them.) Also any food always cold.

Reference # 22-02872642

Author-036649

Kenneth Rivera 11-6-2022

Grievant Signature

Date

ACTION REQUESTED: Request to bring styrofoam trays back

ACTION TAKEN BY IGC:  PROCESSED  UNPROCESSED  OTHER

THE STATE OF SOUTH CAROLINA

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Appellate Case No. 2023-000578

South Carolina Department of Corrections, Respondent,

v.

Kenneth Rivera #318979, Appellate.

### CERTIFICATE OF SERVICE

I certify that this Designation of Matter complies with Rule 209, SCACR.

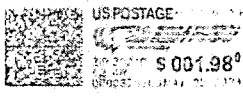
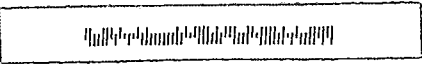
April 26, 2023

Counsel on Record

Joseph R. Shakibanaxab  
Office of General Counsel  
PO Box 21787  
Columbia, SC 29221-1787

Kenneth Rivera  
Kenneth Rivera #318979  
BRSF-SA #240  
4460 Broad River Rd.  
Columbia, SC 29210

Kenneth Rivera #318979  
BRSF-SIA #240  
4460 Broad River Rd.  
Columbia, SC 29210



**RECEIVED**  
MAY 02 2023  
BRCI  
MAILROOM

**RECEIVED**  
MAY 05 2023  
SC Court of Appeals

SC Court of Appeals  
Jenny Abbott Kitchings, Clerk  
P.O. Box 11629  
Columbia, South Carolina 29211